IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Crl.Rev.Pet.No. 3313 of 2007()

C.C. NO. 795 OF 2002 OF CHIEF JUDL.MAGISTRATE, RANNI
CRA 17/06 OF SESSIONS JUDGE, PATHANAMTHITTA

REVN. PETITIONER: APPELLANTS/ACCUSED

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1. THOMAS GEORGE,S/O. GEORGE,
KARIGATTIL, PEZHUMPARA,
VADASSERIKARA VILLAGE.

2. CHACKO GEORGE, S/O. GEORGE,
KARIGATTIL, PEZHUMPARA,
VADASSERIKARA VILLAGE.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: COMPLAINANT AND STATE

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3313 of 2007

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Dated: 27th September 2007

ORDER

The revision petitioners who were accused Nos. 1 and 2 in C.C. No. 795 of 2002 on the file of the Chief Judl. Magistrate, Ranni chalalenge the conviction entered and the sentence passed against them concurrently by the courts below for offences punishable under Sections 143, 147, 447 and 427 read with Sec. 149 I.P.C.

2. The case of the prosecution can be summarised as follows:-

On 23-11-2002 at about 11 0' clock in the night, about 15 persons including A1 to A6 formed an unlawful assembly armed with deadly weapons like axe, chopper, spade etc. and in furtherance of their common object to cause damage to P.W.1, they criminally trespassed upon the property in the possessions of P.W.1 and comprised in Survey No. 923/1B/19 of Vadasserikkara Village and cut down a coconut tree, six mullumurikku trees with pepper vines on them, a mango tree with pepper vines on them and levelled the soil causing a loss of Rs. 6,000/- to P.W.1.

3. Altogether six persons including the revision petitioner faced the trial. On the accused pleading not guilty to the charge framed by the court below for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 4 witnesses as P.Ws 1 to 4 and got marked 5 documents as Exts.P1 to P5. They examined one witness as DW1 and got marked Exts. D1 to D5.

4. The accused denied the incriminating circumstances put to them from the evidence for the prosecution when examined under Sec. 313 (1) (b) Cr.P.C. They did not adduce any defence evidence.

5. The learned Magistrate, after trial, as per judgment dated 13-12-2005 acquitted accused Nos. 3 to 6 but convicted the revision petitioners (A1 and A2) for the offences charged against them. For the conviction under Sections 143, 147, 447 and 427 read with Sec. 149 I.P.C. each of them was sentenced to undergo simple imprisonment for three months and for the conviction under Section 427 I.P.C. the revision petitioners were each sentenced to pay fine of Rs. 5000/- as well, and on default to pay the fine, to suffer simple imprisonment for two months. The substantive sentences were directed to be run concurrently. One half of the fine amount was directed to be paid to P.W.1 as compensation.

6. Revision petitioners preferred an appeal as Crl. Appeal No. 17 of 2006 before the Sessions Court, Pathanamthitta . As per judgment dated 4-7-2007 the Sessions Court confirmed the conviction but modified the sentence directing the revision petitioner to undergo simple imprisonment for two months each under Sections 143 and 147 I.P.C. and to undergo simple imprisonment for one month under Section 447 I.P.C. and simple imprisonment for two months and to pay a fine of Rs. 5,000/- under Section 427. On default to pay the fine, the defaulting accused were directed to suffer simple imprisonment for one month. It is the said judgment which is assailed in this Revision.

7. Eventhough the learned counsel appearing for the revision petitioners assailed the conviction recorded against them, I do not find any good ground for interference with the conviction. Besides

P.W.1, his daughter P.W.2 and a neighbour P.W.3 supported the prosecution. It may be true that there is a civil dispute existing between the parties as evidenced by the defence documents and as spoken to by DW1. But that is hardly a reason for the accused to criminally trespass upon the property of P.W.1 during the dead of the night and indulge in a destruction spree. In the absence of any infirmity in the appreciation of evidence by the courts below, this Court sitting in the rarefied revisional jurisdiction will be loathe to interfere with the conviction recorded by the courts below and the same is accordingly confirmed.

8. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioners. The evidence in the case will show that the revision petitioners and others had cut down a coconut tree and six mullumurikku trees with pepper vines and a mango tree with pepper vines over it and altered the nature of the soil. Even though the loss alleged by the prosecution was Rs. 6,000/- it is a matter for inference that payment of compensation of Rs. 6,000/- can hardly make good the loss sustained by P.W.1. No doubt, it was the existing civil dispute between the parties which might have impelled the revision petitioners and others to commit the wanton act of destruction. But at the same time, I do not think that they deserve penal servitude by way of incarceration. I am of the view that interests of justice will be adequately met by imposing appropriate fine or compensation which is commensurate with the loss sustained by P.W.1. Accordingly, the sentence imposed on the revision petitioner is set aside and instead each of them is sentenced to pay a fine of Rs. 3,000/- each under Sections 143, 147 and 447 read with Sec. 149 I.P.C. and imprisonment till rising of court

and to pay a fine of Rs. 5000/- each under Sec. 427 read with 149 I.P.C. From out of the fine amount , a sum of Rs. 15,000/- shall be paid to P.W.1 for the loss sustained by him. The above amount shall be compensation payable under Sec. 357 (1) Cr.P.C. If the fine amount as aforesaid is not paid within 45 days, the defaulting revision petitioner shall undergo simple imprisonment for one month by way of default sentence.

This Crl. Revision is disposed of conforming the conviction entered but modifying the sentence as above.

V. RAMKUMAR,
(JUDGE)

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